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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

SHERMAN G. SORENSEN, M.D.,

Plaintiff,

v.

GERALD I. POLUKOFF, M.D., ZABRISKIE
LAW FIRM, LLC, a Utah limited liability
company, RHOME ZABRISKIE, J.D.,
FLEMING NOLEN & JEZ, L.L.P., a Texas
limited liability partnership, and RAND P.
NOLEN, J.D.,

Defendants.

Central Division No. 2:18-CV-00067-TS-PW
Judge Ted Stewart
Magistrate Jared C. Bennett

**MOTION FOR DISCOVERY UNDER
FEDERAL RULE OF CIVIL
PROCEDURE 56(d)**

Oral Argument Requested

JURY DEMAND

Defendants filed a Motion for Partial Summary Judgment as to Counts I and II of the Revised Second Amended Complaint (“Complaint”) (Dkt. 97). For the reasons stated in Plaintiff’s Opposition to Defendants’ Motion for Partial Summary Judgment (“Opposition”), filed contemporaneously with this Motion, Defendants’ Motion for Partial Summary Judgment should be denied.

However, because Plaintiff has not been permitted to conduct discovery, he is unable to fully present facts essential to his Opposition because those facts are in the exclusive custody and control of Defendants and/or in the exclusive custody and control of third parties. Significantly, requests for further discovery should ordinarily be treated liberally. *See, e.g. Comm. for First Amendment v. Campbell*, 962 F.2d 1517, 1522 (10th Cir. 1992). Moreover “summary judgment [should] be refused where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5, 106 S. Ct. 2505 1986).

Accordingly, pursuant to Federal Rule of Civil Procedure 56(d), and for the reasons stated in the Declaration of Melinda Checketts, filed concurrently herewith, Plaintiff moves this Court to deny, or defer consideration of Defendants’ Motion for Partial Summary Judgment to allow time to conduct discovery.

DATED this 9th day of September, 2020.

GROSS & ROONEY

/s/ Melinda Checketts
Attorneys for Plaintiff